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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,118	09/25/2001	Eugene David Rodgers	9080/23611	9968

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EXAMINER

COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/964,118

Applicant(s)

RODGERS, EUGENE DAVID

Examiner

Elizabeth M. Cole

Art Unit

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**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 18-21, 25, 26, 28, 29 and 37-45 is/are pending in the application.
- 4a) Of the above claim(s) 37-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 18-21, 25, 26, 28, 29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

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1. Claims 1-10, 18-21, 25-26, 28-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The amendment reciting that the magnetic composite fibers "consists of" a polymer fiber matrix and a plurality of magnetic particles renders the claims vague and indefinite because "composite fiber" is a term of art which refers to sheath- core or side-by-side bi-component fibers, but it appears from the arguments presented with the amendment that Applicant intends to claim a fiber having a single polymeric material with magnetic powder dispersed within the single polymeric material, which would exclude composite fibers. Therefore, the scope of the claims is not clear. Two prior art rejections are set forth below, one based on the interpretation that Applicant is claiming a composite fiber and one based on the interpretation that Applicant is claiming a single polymeric material which is mixed with a magnetic powder.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 4, 6, 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 06-108,309 as set forth in paragraph 3 of the final rejection. With regard to the new limitations which recite that the magnetic composite fibers "consist of" a polymer fiber matrix and a plurality of magnetic particles and that the exterior of the fibers form a surface of the fabric, the fiber in JP '309 is a fiber which consists of a polymeric fiber matrix, (i.e., the sheath polymer and the core polymer correspond to the claimed polymeric fiber matrix), wherein the magnetic particles are encapsulated in the

polymeric fiber matrix since they are dispersed in the core. Since the fibers make up the fabric, the exterior of the fiber would necessarily form a surface of the fabric.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP '309 as applied to claims 1, 4,6,18-21 above, and further in view of Ishino et al, U.S. Patent No. 4,515,850 as set forth in paragraph 4 of the final rejection.

5. Claims 3, 5, 7-9, 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '309 as applied to claims above, and further in view of Miyaguchi, U.S. Patent NO. 5,882,292 as set forth in paragraph 5 of the final rejection.

6. Claims 10, 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '309 in view of Miyaguchi as applied to claims above, and further in view of NL 83-1728 to Visscher as set forth in paragraph 6 of the final rejection.

7. Claims 1,4,6,18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 55-030453. JP '453 discloses a woven or knitted fabric formed from fibers which consist of a mixture of synthetic resin and magnetic powder. The fibers would inherently be present and form a surface of the fabric since the fibers are what makes up the fabric. JP '453 teaches that the fabric can be formed into garments which are worn on the human body. JP '453 does not explicitly teach that the fabric comprises stitches to hold the fabric in a desired shape. However, it is well known to construct garments so that they have stitches which hold together seams and hold the fabric of the garment in a particular shape. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed stitches to hold the fabric of JP '453 in a particular configuration. Claim 2 is rejected under 35

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U.S.C. 103(a) as being unpatentable over JP '309 as applied to claims 1, 4,6,18-21 above, and further in view of Ishino et al, U.S. Patent No. 4,515,850 as set forth in the previous rejection. Claims 3, 5, 7-9, 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 55-030453 as applied to claims above, and further in view of Miyaguchi, U.S. Patent NO. 5,882,292 as set forth in the previous rejection.

8. Claims 10, 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 55-030453 in view of Miyaguchi as applied to claims above, and further in view of NL 83-1728 to Visscher as set forth in the previous rejection.

9. Applicant's arguments filed 10/31/05 have been fully considered but they are not persuasive. Applicant argues in JP '309 the core which comprises the magnetic particles does not form a surface of the fabric. However, JP '309 teaches a polymeric fiber matrix in that the sheath and the core would correspond to the polymeric fiber matrix and also teaches that the magnetic particles are encapsulated within the polymeric fiber matrix since all of the particles are contained within the magnetic particles. The instant claims do not require that a single polymer be used and do not require that the magnetic particles are uniformly distributed throughout the polymeric material.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.



Elizabeth M. Cole
Primary Examiner
Art Unit 1771

e.m.c